APPENDIX A

TRANSCRIPT OF PROCEEDINGS, JUNE 8, 1966

Opinion of the Court

THE COURT: This is a motion to impeach the ruling of Arbitration Board No. 282 which was in the form of answers to questions submitted to that Board in connection with the work of one of the Special Boards of Adjustment created under the basic Award.

Many of the points or objections raised are of the type that have already been discussed and disposed of by this Court in cases entitled In Re Certain Carriers etc., 231 F. Supp. 59,248 F. Supp. 1008, and Brotherhood of Railroad Trainmen v. St. Louis, Southwestern Railway Co., decided on April 21st of this year.

These objections involve such matters as whether guidelines were properly followed by the Special Board, whether it was error for the Special Board of Adjustment not to require that a transcript of the testimony be maintained unless the parties met the expense, and similar matters, and the Court without repeating the discussion refers to the discussion in the cases referred to.

There is, however, one new objection raised in this instance that was not raised in the cases already referred to, namely, that the Special Board of Adjustment did not give a fair hearing to the representatives of employees. Counsel does not point to any one circumstance which he would contend gives rise to such an inference, but he claims that an accumulation of circumstances, taken together, justify the conclusion that the hearing was not fair.

It is objected, first, that the hearing was held in premises owned by the carrier. The Court sees no basis for objection on that score.

It is further argued, and if that is sustained it would be more serious, that insufficient time was accorded for the

preparation or submission of the cases. At least two months, however, expired between the service of notices under Award 282 and the hearing before the Special Board. Surely that was sufficient time for preparation. Moreover, it has been held time and time again that the question of continuance and setting dates for hearings is entirely within the discretion of the tribunal and it would be only in an extreme situation that such action would be subject to review. There is no such extreme situation here. More time was accorded for final argument than was actually used by representatives of the parties.

The Court is unable to find that there was an abuse of discretion or that the hearings were so hurried as to constitute a denial of a fair hearing.

So far as this Court is concerned, as the Court has indicated in the cases referred to, the scope of judicial review of the decision of an Arbitration Board under the Railway Labor Act is very narrow, much narrower than the scope of review of the action of an administrative agency. Considering the answers of Board 282 which are sought to be impeached in the light of the limitations contained in Section 9 of the Railway Labor Act, 45 United States Code 159, the Court concludes that the award is not vulnerable within any of the criteria set forth in the statute.

Moreover, upon reading the answers to the questions submitted to Board 282, which constitute the award involved here, it is quite evident that Board 282 examined the record and found that it was sufficient to permit awards based on the guidelines contained in Award 282, and it also reached the conclusion that the record before the Special Board was voluminous, included detailed written surveys, findings, allegations by both parties, and that there was a full and fair hearing.

This Court concludes that there is no basis for impeaching the answers made by Board 282, and, accordingly, the petition to impeach the award is dismissed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,348
No. 20,349

BROTHERHOOD OF RAILROAD TRAINMEN,
APPELLANT

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY (LINES EAST), ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia

Decided July 27, 1967

Mr. David Leo Uelmen, with whom *Mr. Milton Kramer* was on the brief, for appellant.

Mr. Richard T. Conway, with whom *Messers. Francis M. Shea* and *Benjamin W. Boley* were on the brief, for appellees.

Before: BASTIAN, *Senior Circuit Judge* and BURGER and WRIGHT, *Circuit Judges.*

PER CURIAM: This is another "manifestation of a litigation syndrome that seems to keep the railroads and various governmental entities in the courts on an ancient issue." *Brotherhood of Railroad Trainmen* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, — U.S. App. D.C. ——, —, — F.2d —, — (Nos. 19,867, 20,003-04, decided May 19, 1967, slip op. p. 1). Issues raised in these appeals have been before this court previously in *Brotherhood of Railroad Trainmen* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co., ibid,* and *Brotherhood of Railroad Trainmen* v. *St. Louis Southwestern Railway Co., et al.*, — U.S.

App. D.C. —, —, — F.2d — — (Nos. 20,212-13, decided May 19, 1967). Our prior opinions are controlling and dispositive of these issues and there is no need to supplement those opinions.

In addition, however, Appellant Brotherhood raises a new claim in these appeals. It now contends that the hearing before the Special Board of Adjustment did not afford it due process of law because of certain alleged procedural irregularities not heretofore considered.[1] Although these issues were exhaustively discussed and found to be without merit in Judge Robinson's original decision in the District Court, *Brotherhood of Railroad Trainmen* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 237 F. Supp. 404, 418-25 (D. D.C. 1964), we remanded that case to Board 282 in order that it might pass upon these issues. *Brotherhood of Railroad Trainmen* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 120 U.S. App. D.C. 295, 345 F.2d 985 (1965). The Board concluded that the alleged procedural irregularities, considered singly or together, did not deprive the B.R.T. of the minimum essentials of a full and fair hearing.

We have previously upheld the Board determination that due process was not violated by lack of a transcript; we similarily affirmed the Board decision that a "meaningful review" had been provided. Although it would appear that the specific defects raised here are subsumed within the due process concept of "meaningful review" we did not discuss them in our prior opinions. We have now fully examined the claim newly raised on this appeal, and we find it to be without merit.

Affirmed.

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[1] Specifically the union claims that it was impossible to decide the job assignments in 60 days; that the hearing held in the company offices was inherently unfair and offered little time or space for interviews with witnesses; that there was a failure to allow a reasonable time to submit written exhibits; that the "referee" was not neutral; and that the "findings" were prepared by the company and submitted to the referee for approval.

WRIGHT, *Circuit Judge, dissenting:* Public Law 88-108[1] provides that the compulsory arbitration required in this case "shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act." Pub.L. 88-108, § 4. As I have indicated in my dissents in *Brotherhood of Railroad Trainmen* v. *St. Louis Southwestern Railway Co., et al.*, Nos. 20,212-3, and *Brotherhood of Railroad Trainmen* v. *Chicago, Milwaukee, St. Paul & Pacific RR Co., et al.*, Nos. 19,867, 20,003 and 20,004, decided May 19, 1967, the Compulsory Arbitration Board convened pursuant to Public Law 88-108 cannot avoid this statutory requirement by delegating portions of its authority to local boards.

In these cases appellant makes the additional point that the local board deprived it of the minimum essentials of a full and fair hearing in that, among other things, it was denied a reasonable opportunity to prepare its case, to call witnesses, and to conduct cross-examination. The company, of course, argues that the board hearing was full and fair. Since, in violation of Section 7 of the Railway Labor Act[2] and in spite of appellant's request, no transcript of the proceedings before the local board was provided, I am unable to resolve this due process issue on this record.

I respectfully dissent.

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[1] 77 STAT. 132 (1963), 45 U.S.C. § 157 (1964).

[2] 45 U.S.C. § 157 (1964).

APPENDIX C

(Filed July 27, 1967)

Judgment

These causes came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the judgments of the District Court appealed from in these causes be, and they are hereby, affirmed.

Per Curiam

Separate dissenting opinion per Circuit Judge Wright.

APPENDIX D

Judicial Code

28 USC 1254 (1), 62 Stat. 928.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Public Law 88-108.

"Sec. 2. [Arbitration board]. There is hereby established an arbitration board to consist of seven members.

* * * * * * * *

"Sec. 3. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth.

* * * * * * * *

"Sec. 4. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to

sections 7 and 8 of the Railway Labor Act [this section and section 158 of this title], the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act [section 159 of this title]. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act [this chapter].

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Railway Labor Act, Sec. 7,

Third.

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(b) Organization of board; procedure.

The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Duty to reconvene; questions considered.

Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, sub-

mitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

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(e) Compensation and expenses.

Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) Award; disposition of original and copies.

The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to

diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) Compensation of assistants to board of arbitration; expenses; quarters.

A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) Testimony before board; oaths; attendance of witnesses; production of documents; subpoenas; compulsion of witnesses; fees.

All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration.

* * * * * * *

Railway Labor Act, Sec. 8.

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

* * * * * * * *

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

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